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8 **Attorney for Claimants**
9 **Frank and Donald McIver**

10 **UNITED STATES BANKRUPTCY COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

12 **In re**
13 **PG&E Corporation,**
14 **and**
15 **PACIFIC GAS AND ELECTRIC COMPANY,**
16 **Debtors.**

17 ☐ Affects PG&E Corporation
18 ☐ Affects Pacific Gas and Electric Company
19 ☒ Affects both Debtors

20 ***All paper shall be filed in the Lead Case, No.**
21 **19-20088-DM**

Case No. 19-30088-DM

Chapter 11
Lead Case, Jointly Administered

MOTION PURSUANT TO FED. R.
BANKR. PROC. 7015 AND 7017 TO
JOIN REAL PARTY IN INTEREST FOR
CLAIM PREVIOUSLY FILED; OR, IN
THE ALTERNATIVE, TO ENLARGE
TIME TO FILE PROOF OF CLAIM
PURSUANT TO FED. R. BANKR. PROC.
9006(b)(1)

Date: March 24, 2021
Time: 10:00 a.m. (Pacific Time)
Place: Telephonic/Video Appearances
Only

United States Bankruptcy Court
Courtroom 17,
450 Golden Gate Ave., 16th Floor
San Francisco, CA
Judge: Hon. Dennis Montali

Objection Deadline: March 17, 2021

BACKGROUND

Pursuant to Rules 7015 and 7017 of the Federal Rules of Bankruptcy Procedure, which incorporate Federal Rules of Civil Procedure 15 and 17, by this motion ("Motion"), Frank McIver ("Movants") moves to add Donald McIver as an additional claimant and family member to his claim. Frank McIver previously filed Proof of Claim, Claim Number 56289, attached to the Declaration of Drew M. Widders as Exhibit 1. Donald McIver lived with Frank McIver at the time of the fire. Although Frank McIver filed a claim, Donald McIver was too distraught from the after effects of the Camp Fire to be involved in the process and told my firm not to include him in the claim form. Donald McIver has now recovered to the point where he wishes to file a late claim.

This Motion is based upon the points and authorities set forth herein and the concurrently filed Notice of Hearing and Declaration of Drew M. Widders in support of the Motion, in addition to any evidence or oral argument presented at the time of any hearing on this matter. In support thereof, the Movants, by and through their undersigned counsel, respectfully represent as follows:

BASIS FOR RELIEF REQUESTED

The general bar date in these cases was October 21, 2019 ("Original Bar Date"). The process for submission of timely claims was continued after the Original Bar Date. Pursuant to the Stipulation Between Debtors and Official Committee of Tort Claimants to Extend Bar Date for Fire Claimants and for Appointment of Claims Representative (Dkt No. 4651), the Original Bar Date was extended for the benefit of Unfiled Fire Claimants to December 31, 2019 at 5:00 p.m. (Prevailing Pacific Time). The Debtors' Chapter 11 plan ("Plan") was confirmed by court order on June 20, 2020, and pursuant to the Notice of Effective Date, the Plan became effective as of July 1, 2020.

This Motion concerns the claim of Donald McIver, who respectfully requests the Court allow him to be included as a claimant on his brother, Frank McIver's original claim.

Under Rules 7015 and 7017 of Federal Bankruptcy Procedure (which incorporate Federal Rules of Civil Procedure 15(c) and 17(a)(3)) because there is a lack of bad faith on

1 the part of Movants, it is respectfully requested the Court allow the addition of Donald
2 McIver to his brother Frank McIver's original claim.

3 In the alternative, to the extent that an extension of the bar date is required to
4 effectuate the purpose of Rules 7015 and 7017, it is respectfully requested the mistake
5 should be allowed to be corrected by permitting the late filing of the amended proof under
6 Bankruptcy Rule 9006(b).

7 Application of the so-called Pioneer factors shows that Movants' late filing is the result
8 of excusable neglect and therefore permissible under Rule 9006(b)(1). In permitting a
9 creditor's late filing under Bankruptcy Rule 9006(b)(1), the Supreme Court explained that
10 Congress, by empowering the courts to accept late filings where the failure to act was the
11 result of excusable neglect, plainly contemplated that courts would be permitted, where
12 appropriate, to accept late filings caused by inadvertence, mistake or carelessness, as well as
13 by intervening circumstances beyond the party's control. *Pioneer Inv. Servs. Co. v. Brunswick*
14 *Associates L.P.*, (1993) 507 U.S. 380 at 388. The Supreme Court further clarified that whether
15 a claimant's neglect of a deadline is excusable is an equitable determination, taking account
16 of all the relevant circumstances surrounding the claimant's omission. See *id.* at 395. These
17 equitable considerations include (1) The danger of prejudice to the debtor, (2) The length of
18 the delay and its potential impact on judicial proceedings, (3) The reason for the delay,
19 including whether it was within the reasonable control of the movant, and (4) whether the
20 movant acted in good faith.

21 As to the first such factor, Movants' late filing will cause no prejudice to Debtors,
22 inasmuch as the Plan has been confirmed, the associated Fire Victim Trust funded, and so the
23 inclusion of Movants' claim in the pool of fire victim claims will have no impact at all on the
24 Debtors or the bankruptcy estates.

25 As to the second *Pioneer* factor, Movants' delay in filing his claim and any resultant
26 impact on these proceedings are exceedingly modest and immaterial for the same reasons
27 that Debtors will not be prejudiced.

28 As to the third *Pioneer* factor, the reason for the delay and whether it was in Movants'

1 reasonable control, at the time the claim form was due, he was simply to distraught to be
2 involved with the process.

3 As to the final factor, Movants are acting in good faith in filing the amended claim as
4 he is a victim of the Camp Fire and should be allowed a modest recovery for the injuries he
5 sustained as a result of the fire.

6 **CONCLUSION**

7 For the reasons set forth above, Movants respectfully request that this Court enter an
8 order pursuant to Bankruptcy Rules 7015, 7017, and 9006(b)(1) as follows:

- 9 1. Granting this Motion;
- 10 2. Directing that Donald McIver be added as Claimants to Exhibit 1 to the Declaration
- 11 of Drew M. Widders, Proof of Claim, Claim Number 56289;
- 12 3. Directing that Exhibit 2, the Amended Proof of Claim, Claim Number TBD be
- 13 deemed timely filed.
- 14 4. Granting such other or further relief as the Court deems just and proper.

15 Dated: February 17, 2021

WILCOXEN CALLAHAM, LLP

17 By: /s/ Drew M. Widders
18 DREW M. WIDDERS
Attorneys for Claimants